

REMARKS

The Action indicated that claims 6-9, 12, 13, and 22-23 were pending at the issuance of the instant Office Action. Claims 6, 7, 8 and 12 have been amended. Claims 22-23 have been canceled without prejudice or disclaimer.

Applicants note that the Office Action Summary for the instant Office Action designated the Action as **non-final**. However, the last page of the Action indicated that the Action was final. Applicants' representative discussed the discrepancy with Examiner Hayes by phone on December 8, 2004. Examiner Hayes confirmed that the Action was **non-final**. The rejections set forth in the Office Action have been overcome by amendment.

1. First Rejection of claims under 35 U.S.C. § 112, first paragraph

Claims 6-9, 12-13, 22-23 stand rejected as allegedly not satisfying the written description requirement of 35 U.S.C. § 112, first paragraph. The Action specifically asserts that the phrase "non-VGF protein" constitutes new matter. While Applicants maintain the position that the phrase "non-VGF protein" is inherently present in the specification, Applicants have amended the claims to recite the phrase "heterologous amino acid sequence" and have removed the phrase "non-VGF protein" solely to expedite prosecution. Support for the amendment is found in the specification (for example at page 3, line 27, and at page 9, lines 11-13). Therefore, since the phrase "non-VGF protein" has been removed from the claims, this ground of rejection is obviated.

2. Second Rejection of claims under 35 U.S.C. § 112, first paragraph

Claims 6-9, 12-13, 22-23 stand rejected as allegedly not satisfying the written description requirement of 35 U.S.C. § 112, first paragraph. The Action further asserts that Applicants have introduced a negative limitation to exclude the VGF polypeptide described by Salton et al. (1991). Specifically, the Action alleges that the phrase "non-VGF protein" is meant to exclude the VGF polypeptide taught by Salton. As discussed above, Applicants have removed the rejected language from the claims, thereby rendering this rejection moot.

In addition, Applicants note that claim 6 has been amended to include the properties encompassed by claim 22 and claim 22 has been canceled. Applicants believe that the

amendment is consistent with the Examiner's helpful suggestions for placing the claims in condition for allowance. Consequently, Applicants respectfully request that this ground of rejection be withdrawn, and allowance of the claims is respectfully solicited.

3. Rejection of claim 23 under 35 U.S.C. § 112, first and second paragraphs

Claim 23 stands rejected under 35 U.S.C. § 112, first paragraph as allegedly not being enabled for fusion polypeptides containing reasonably well known polypeptide sequences that possess the properties recited in claim 22, or for fusion polypeptides that contain structurally and functionally unknown and uncharacterized amino acid sequences. Claim 23 also stands rejected under 35 U.S.C. § 112, second paragraph as allegedly being indefinite and incomplete. Claim 23 has been canceled, without prejudice as to prosecution in future applications, thereby rendering these rejections moot.

CONCLUSIONS

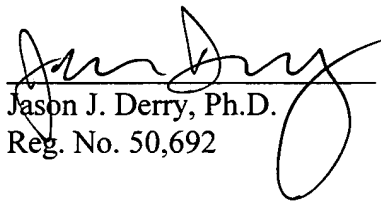
Applicants submit that the claims as presented herein satisfy the statutory requirements of 35 USC § 112. Applicants respectfully contend that all conditions of patentability are met in the pending claims. Allowance of the claims is thereby respectfully solicited.

If Examiner Hayes believes it to be helpful, he is invited to contact the undersigned representative by telephone at (312) 913-0001.

Respectfully submitted,
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